

BAILEY COWAN HECKAMAN PLLC

Robert W. Cowan (admitted *pro hac vice*)
 rcowan@bchlhw.com
 1360 Post Oak Blvd., Suite 2300
 Houston, TX 77056
 Telephone: 713-425-7100
 Facsimile: 713-425-7101
 onewheel@bchlhw.com

MORGAN & MORGAN

Rene F. Rocha (admitted *pro hac vice*)
 COMPLEX LITIGATION GROUP
 400 Poydras St., Suite 1515
 New Orleans, LA 70130
 rrocha@ForThePeople.com
 P: (954) 318-0268
 F: (954) 327-3018

*Interim Co-Lead Counsel for
 Personal Injury/Wrongful Death Plaintiffs*

Additional Counsel Listed on Signature Pages

NILAN JOHNSON LEWIS PA

John J. Wackman (admitted *pro hac vice*)
 jwackman@nilanjohnson.com
 Christine M. Mennen (admitted *pro hac vice*)
 cmennen@nilanjohnson.com
 Kathleen K. Curtis (admitted *pro hac vice*)
 kcurtis@nilanjohnson.com
 Kelly P. Magnus (admitted *pro hac vice*)
 kmagnus@nilanjohnson.com
 250 Marquette Avenue South, Suite 800
 Minneapolis, MN 55401
 Tel: (612) 305-7500
 Fax: (612) 305-7501

Attorneys for Defendant Future Motion, Inc.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

IN RE: FUTURE MOTION, INC.
 PRODUCTS LIABILITY LITIGATION

No.: 23-md-03087-BLF

**PARTIES' PROPOSED AGENDA FOR
 CASE MANAGEMENT CONFERENCE
 NUMBER 2 (MARCH 7, 2024)**

This document relates to:

ALL ACTIONS

The parties to this MDL proceeding hereby submit the following proposed agenda for the upcoming Case Management Conference to be held by Zoom® before the Court on March 7, 2024 at 1:30 p.m. Pacific time, and would respectfully present to the Court as follows:

I. PIWD Plaintiffs' Leadership Proposal

On February 26, 2024, a proposal for Co-Lead, Liaison, Executive Committee, and Steering Committee Personal Injury/Wrongful Death ("PIWD") Plaintiffs' counsel was submitted to the Court for consideration. (Doc. 81.) PIWD Plaintiffs' counsel uniformly intend to establish a balanced leadership team, which reflects diversity of all types and is composed of individuals capable of steering this litigation to resolution. PIWD Plaintiffs recognize that their leadership should include attorneys with demonstrated capacity, skill, reputation, and financial resources to fairly, effectively, and efficiently lead the MDL. They also recognize the importance for their leadership to reflect a diversity of legal talent in terms of education, background, experience, and demographics. The proposed candidates are as follows:

Co-Lead Counsel

Robert Cowan
Rene Rocha

Liaison Counsel

Anya Fuchs

Executive Committee

Cameron Bell
Megan Roper
Lowell McKelvey
Michael Johnson
Eli Hare

Steering Committee

Michael Gallagher
Matthew Felty
Hayden Wyatt
Aaron Heckaman

II. Discovery Update

The PIWD Plaintiffs' Interim Leadership and Defendant's counsel reached an agreement with respect to the content of a Plaintiff's Fact Sheet ("PFS") on or before the deadline imposed by CMO 1, and such PFSs should have been provided to all PIWD Plaintiffs for completion immediately

thereafter. All PIWD Plaintiffs with cases then on file or transferred to the MDL should serve a completed PFS upon defense counsel no later than March 6, 2024 per CMO 1.

In addition, Plaintiffs' Interim Co-Lead Counsel notified defense counsel of their Phase I Initial Disclosure category pursuant to CMO 1 as follows on February 27, 2024:

Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in an action made subject to MDL 3087, and/or to indemnify or reimburse for payments made to satisfy any judgment for personal injury and/or class action claims made the subject of or related to these MDL 3087 proceedings, including any and all such insurance agreements for the 2014 through 2024 policy periods. The term "insurance agreement" shall mean the entirety of all primary, excess, and umbrella liability insurance policies, as well as the self-insured retention limits for the identified policy periods.

The foregoing notice triggered Defendant's 30-day response deadline under CMO 1.

The PIWD Plaintiffs' counsel have circulated drafts of written discovery for service upon Defendant, and such counsel anticipate making such service within the next two weeks, if not earlier.

III. Settlement Conference Planning Session with United States Magistrate Judge Beeler

PIWD Plaintiffs' Interim Co-Lead Counsel, Class Counsel, and Defendant's Counsel and other attorneys attended an approximately one-hour Zoom[®] conference with United States Magistrate Judge Beeler on February 15, 2024. The discussion was introductory in nature but also wide-ranging with regard to options and planning for future involvement by Judge Beeler to assist the parties through in-person settlement conference(s). Ultimately, Judge Beeler instructed the parties to confer on a timeline for them to (1) organize the relevant information (i.e., detailed factual information about the Plaintiffs (e.g., damages, mechanism of injury, etc.) and insurance silos for the Defendant, among other issues); (2) digest that information (internally, with each other, and with insurance defense and coverage counsel); (3) formulate proposals for how to structure and approach the settlement conference, exchange them, and confer about them to identify and address obstacles; and (4) thereafter have an in-person settlement conference with the Court. Judge Beeler ordered the parties to provide an email update to the Court on their meet and confer efforts with respect to the timeline for the above no later

1 than April 3, 2024. Class Counsel also discussed with Judge Beeler the timing of a separate settlement
2 conference to address the class action. Both PIWD Plaintiffs' Counsel and Class Counsel (as well as
3 Judge Beeler) believe that the in-person settlement conferences for the PIWD Plaintiffs and Class
4 Plaintiffs should be held separately.

5 **IV. JCCP 5305 Update**

6
7 In early February 2024, the Chief Justice of California and Chair of the Judicial Council signed
8 an order permitting the Presiding Judge of the Santa Cruz Superior Court to assign a trial coordination
9 judge to preside over JCCP 5305. The Honorable Judge Volkmann currently presides over JCCP 5305,
10 and upon his upcoming retirement in March, the assignment will be transferred to the Honorable Judge
11 Cogliati.

12
13 To date, including add-ons, there are approximately 150 actions in JCCP 5305; the majority of
14 those actions are co-represented by two law firms (Pearce Lewis LLP and Bailey Cowan Heckaman
15 PLLC). The Court has signed leadership organizational and appointment orders for both sides.
16 Leadership for the Parties have adopted the same Plaintiff Fact Sheet as agreed to in this MDL and are
17 imminently close to finalizing stipulated Master Pleadings (including the Master Complaint, Master
18 Answer, and Short-Form Complaint).

19
20 With the support of Leadership, the Court recently appointed Mr. John Burton as Special
21 Master of JCCP 5305. Mr. Burton will assist the litigants to expeditiously resolve discovery disputes
22 and will also assist and offer opinions with respect to other issues critical to the Parties' shared goal
23 of achieving efficiency and reducing the burden placed upon the resources of the Court. Leadership
24 counsel for both sides have individually met with the Special Master.

25
26 The next status hearing before Judge Volkmann is March 20, 2024. Special Master Burton, as
27 well as Leadership members for both sides, plan to attend in person and likewise intend to meet with
28

Mr. Burton after the hearing's completion for the purpose of discussing a proposed trial schedule that is reasonably tempered to accommodate the considerable number of actions in the JCCP.

V. Upcoming Events / Action Items

- On-going: Parties coordinating timely transfer of add-on matters
- 3/6: Plaintiff Fact Sheets Due for all current MDL Plaintiffs
- On-going: Parties conferring on approach to settlement conference process
- On-going: Future Motions' review of Plaintiff Fact Sheets
- 3/28: Deadline for Future Motion's response to Plaintiffs' Phase I Initial Disclosure Request
- 4/3: Deadline to update Judge Beeler on joint efforts re: settlement conference process
- 4/10: Deadline for Parties' list of representative cases
- TBD: Parties request a fixed deadline for objections to representative case(s) (if necessary)
- TBD: Parties request a further Status Conference for late April, after the deadline to submit objections to representative case(s).

Dated: February 29, 2024

Respectfully submitted,

By: /s/ Robert W. Cowan

BAILEY COWAN HECKAMAN PLLC

Robert W. Cowan (admitted *pro hac vice*)

1360 Post Oak Blvd., Suite 2300

Houston, TX 77056

Telephone: 713-425-7100

Facsimile: 713-425-7101

aheckaman@bchlhw.com

rcowan@bchlhw.com

-and-

MORGAN & MORGAN

Rene F. Rocha (admitted *pro hac vice*)

COMPLEX LITIGATION GROUP

400 Poydras St., Suite 1515

New Orleans, LA 70130

rrocha@ForThePeople.com

P: (954) 318-0268
F: (954) 327-3018

*Interim Co-Lead Counsel for
Personal Injury/Wrongful Death Plaintiffs*

By: /s/ Gregory Haroutunian

CLAYEO C. ARNOLD,
A PROFESSIONAL CORPORATION
M. Anderson Berry (SB# 262879)
Gregory Haroutunian (SB# 330263)
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 239-4778
Facsimile: (916) 924-1829
Email: aberry@justice4you.com
Email: gharoutunian@justice4you.com
Email: bjack@justice4you.com

- and -

HAGENS BERMAN SOBOL SHAPIRO LLP
Jerrod C. Patterson (admitted *pro hac vice*)
Joseph M. Kingerski (admitted *pro hac vice*)
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: jerrodp@hbsslaw.com
Email: joeyk@hbsslaw.com

Attorneys for James Loh, Sean Michael Smith, Giovany Rico, Bradley Reber, Raymond Wang, Christopher Foo, Devon Holt, Valentina Forcella, Derek Guilford, James Grant, Johnny Leombruno, Carlos Murphy, Stephen Powell, Richard Bonner, Joshua Flott

NILAN JOHNSON LEWIS PA

By: /s/ John Wackman

John J. Wackman (admitted *pro hac vice*)
Christine M. Mennen (admitted *pro hac vice*)
Kathleen K. Curtis (admitted *pro hac vice*)
Kelly P. Magnus (admitted *pro hac vice*)

250 Marquette Avenue South, Suite 800
Minneapolis, MN 55401
Tel: (612) 305-7500
Fax: (612) 305-7501
Email: jwackman@nilanjohnson.com
cmennen@nilanjohnson.com
kcurtis@nilanjohnson.com
kmagnus@nilanjohnson.com

Attorneys for Defendant Future Motion, Inc.

ADDITIONAL PLAINTIFFS' COUNSEL LISTED ON NEXT PAGE

ADDITIONAL PLAINTIFFS' COUNSEL:

Eitan Goldrosen (admitted *pro hac vice*)
MORGAN & MORGAN, P.A.
20 North Orange Avenue, Suite 1600
Orlando, Florida 32801
Phone: (407) 420-1414
Email: egoldrosen@forthepeople.com

Attorneys for Jason Bailey, Christopher Delapaz, Schuyler Elliot, Brandon Greer, Michael Haggerty, Orlando Lopez-Roman, Ralph Nacca, Ian Quincannon, Jonathan Reeves, Kevin Roesler, Joel Thomas

Michael K. Johnson, Esq.
(admitted *pro hac vice*)
Adam Kress
(admitted *pro hac vice*)
JOHNSON BECKER, PLLC
444 Cedar Street, Suite 1800,
St. Paul, MN 55101
(612) 436-1800 / (612) 436-1801 (f)

Attorney for Matthew Boston, Jonathan Burke, and Christopher Emmel

Joe Mooneyham (admitted *pro hac vice*)
MOONEYHAM BERRY, LLC
Post Office Box 8359
Greenville, South Carolina 29604
P: 864.421.0036 | F: 864.421.9060
joe@mbllc.com

Attorney for Samuel King

Rachel M. Luke (admitted *pro hac vice*)
Michael Angiulo (admitted *pro hac vice*)
FRIEDMAN | RUBIN PLLP
1109 1st Avenue, Suite 501,
Seattle, WA 98101
Rachel@friedmanrubin.com
Phone: (206) 501-4446
Fax: (206) 623-0794

Attorney for Plaintiffs Whitney Young and Mary Kokstis

Craig Hoffman (admitted *pro hac vice*)
MACK, TRAGOS & HOFFMAN, LTD.
53 West Jackson Blvd., Suite 815
Chicago, IL 60604
Direct: (312) 242-2454
Fax: (312) 284-1865
CHoffman@MTH-law.com

Attorney for Plaintiffs Keith Gregie and John Scherschel

Daniel C. Jensen, Esquire
(*pro hac vice* anticipated)
Florida Bar No. 0112566
Lytal, Reiter, Smith, Ivey & Fronrath
515 N. Flagler Drive, 10th Floor
West Palm Beach, FL 33401
(561) 655-1990 Telephone
(561) 820-2229 Direct Line
(561) 820-2299 Direct Fax
Primary e-service: djensen@foryourrights.com
Secondary e-service: kharris@foryourrights.com

Attorney for Victor McNair, Anh Truong, Scott, Patrick, Shane Smith, and Kwynn Koop

Thomas H. Murphy, Esq.
COGAN & POWER, P.C.
One East Wacker Drive, 38th Floor
Chicago, Illinois 60601
(312) 477-2500
(312) 477-2501 (Fax)
tmurphy@coganpower.com

Attorney for Plaintiff, Jason Brown

Matthew K. Felty (admitted *pro hac vice*)
LYTLE SOULÉ & FELTY, P.C.
1200 Robinson Renaissance
119 N. Robinson Ave.
Oklahoma City, OK 73102
(405) 235-7471 (Telephone)
(405) 232-3852 (Facsimile)
mkfelty@lytlesoule.com

Lowell P. McKelvey (admitted *pro hac vice*)
MCKELVEY LAW LLC
1205 NW 25th Avenue,
Portland, Oregon 97210
lowell@mckelveylaw.com
Phone: (503) 349-7535
Fax: (971) 357-2142

Attorney for Plaintiff Keith Gregie, John Scherschel, and Bryan Reedy,

- and -

Phillip G. Whaley (admitted *pro hac vice*)
RYAN WHALEY
400 N. Walnut Ave.
Oklahoma City, OK 73104
(405) 239-6040 (Telephone)
(405) 239-6766 (Facsimile)
pwhaley@ryanwhaley.com

Eli J. Hare (*pro hac vice* anticipated)
Dicello Levitt LLP
505 20th Street North, Suite 1500
Birmingham, Alabama 35203
Tel: 205-855-5700
ehare@dicellolevitt.com

Attorney for Caleb Metts

Attorneys for Plaintiff Grant Downs

Timothy F. Pearce, Esq.
Stuart B. Lewis
Anyia Fuchs, Esq.
PEARCE LEWIS LLP
423 Washington Street, Suite 510
San Francisco, CA 94111
Telephone: 415-964-5225
Facsimile: 415-830-9879
Email: tim@pearcelewis.com
Email: stuart@pearcelewis.com
Email: anyia@pearcelewis.com

Cameron Bell (admitted *pro hac vice*)
Oliver Bell Group
50 W. Big Beaver Rd., Suite 200
Troy, MI 48084
Tel: 248-327-6556
Fax: 248-436-3385
cbell@oliverlawgroup.com

Attorney for Thomas Nemeth

Attorneys for Darryl Martin John Oatridge, and Bridget Oatridge

I hereby attest, pursuant to Civil L.R. 5-1(i)(3) that the concurrence to the filing of this document has been obtained from each signatory hereto.

CERTIFICATE OF SERVICE

By: /s/ Robert W. Cowan
Robert W. Cowan